

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Intrado Inc.:	:	
	:	Docket No. 08-0545
Petition for Arbitration pursuant to	:	
Section 252(b) of the Communications	:	
Act of 1934, as amended, to Establish	:	
an Interconnection Agreement with	:	
Illinois Bell Telephone Company.	:	

**INITIAL BRIEF OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 766.300 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 766.300, respectfully submits its Initial Brief in the above-captioned matter.

I. Introduction

A. Procedural History

On September 22, 2008, Intrado, Inc. (“Intrado”) filed a Verified Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to establish an Interconnection Agreement with Illinois Bell Telephone Company (“AT&T”). See, generally, Petition. On September 24, 2008, AT&T filed its appearance herein, and on October 17, 2008, filed its Response. See, generally, AT&T Response. A status hearing was convened on October 1, 2008 at which a schedule for the proceeding was set. Tr. at 5-25. Intrado filed direct testimony on October 22 and 23, 2008, Staff filed direct testimony on November 18, 2008, and AT&T filed rebuttal testimony on November 26, 2008. Intrado and AT&T duly filed reply testimony on December 1, 2008. An evidentiary hearing was convened in the matter on December 3, 2008, and testimony taken and evidence otherwise adduced. Tr. at 26-257. This Initial Brief follows.

B. Applicable Law

The following statutes and regulations are germane to this proceeding:

Section 252(b) of the Communications Act of 1934, as amended (“Act”), under which, *inter alia*, Intrado petitions the Illinois Commerce Commission (“Commission”) for arbitration, provides in relevant part that:

(1) Arbitration

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

47 U.S.C. § 251(b)(1).

Intrado seeks interconnection under Section 251(c) of the Act, which provides in relevant part:

(2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network - -

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier’s network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

C. General Considerations

Intrado has chosen, for its own reasons, to bring its interconnection dispute before the Commission as a petition for arbitration under Section 252(b) of the federal Telecommunications Act, 47 U.S.C. §252(b).¹ This affords Intrado certain rights and benefits, such as quick resolution of contested matters, and the right to obtain from AT&T certain very specific elements, features, functionalities and services at specific rates. However, Intrado's decision to posture this matter as an arbitration proceeding places limits on the Commission's decision of the open issues that Intrado presents for resolution.

Section 252(c) of the federal Act establishes these limitations in detail, stating that:

In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall[:]

- (1) ensure that such resolution and conditions meet the requirements of section 251 [47 USCS § 251], including the regulations prescribed by the Commission pursuant to section 251 [47 USCS § 251];
- (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

47 U.S.C. §252(c)

In short, as a first principle the Commission must, in resolving open issues and imposing terms and conditions upon the parties' Interconnection Agreement ("ICA"),

¹ The Staff offers no opinion regarding other procedural avenues available to Intrado.

comply with federal law and applicable regulations. This requirement, as will be seen, has a profound effect upon the resolution of the matter. Moreover, this requirement circumscribes Staff's recommendations in this proceeding. Staff makes recommendations regarding contested issues which, in a number of cases, it is bound by law to make and perhaps would not propose were the state of the law not what it is.

To the Staff's knowledge, Intrado is the first competitive provider of 911 services to have sought Section 251(c) interconnection in Illinois, and a number of the issues raised in this proceeding are consequently of first impression before the Commission.² This being the case, the Staff offers three general principles to assist the Commission in rendering its arbitration award in this proceeding.

First, the Commission should render its arbitration award in a manner consistent with Section 251(c) of the federal Act, rules and regulations promulgated under that section, and previous Commission decisions interpreting that Section. At a fundamental level, Intrado seeks, in part, relief inconsistent with its election of Section 252 arbitration. It contends that 911 service is "telecommunications service" within the meaning of Section 153(44) of the federal Act, but that 911 service should be treated differently from other telecommunications service for interconnection purposes. See, e.g., Intrado Ex. 2.0 at 23, et seq. (Intrado witness Carey Spence-Lenss states that interconnection for 911 purposes must "look beyond ... traditional interconnection arrangements", and more specifically look beyond the legal requirement that the point of interconnection between AT&T and Intrado be on the AT&T network). The Staff, however, recommends

² As noted below, the two parties previously sought Commission arbitration of a Section 251 agreement, see page 9, *infra*, but this agreement appears never to have been implemented. Tr. at 160-61. The issues raised in that proceeding, however, are not similar to those raised here, with the exception of Issue 1.

that the Commission decline Intrado's invitation to depart from the requirements of Section 251(c) and regulations promulgated pursuant to it.

By adhering to Section 251 and underlying rules, the Commission will be able to take advantage of, and apply, a well-established and consistent set of existing rules, regulations, principles and precedents. Staff Ex. 1.0 at 5. To do otherwise would require the Commission to resolve many of the issues presented in this arbitration on an *ad hoc* and less well-defined basis. Id. Among such well established Section 251 principles are: (1) the requesting carrier is entitled to designate its point of interconnection (hereafter "POI") (and if it so chooses, it may designate a single POI per LATA); (2) any POI designated must be within the Incumbent Local Exchange Carrier's("ILEC") network (unless the ILEC agrees otherwise); each party is responsible for costs of bringing its traffic to the POI; and (3) neither party can dictate the manner in which the other party carries such traffic to the POI. Id. All of these matters are at issue in this proceeding and have been previously decided by the Commission.

Second, the Commission should not render determinations in this arbitration that would affect the rights of any third party not before the Commission in this proceeding. Staff notes that interconnecting with AT&T is only the *first* step Intrado must take in providing regulated competitive 911 services in AT&T's service territory in Illinois. Staff Ex. 1.0 at 6. Significantly, pursuant to Sections 10 and 11 of the Emergency Telephone System Act, 50 ILCS 75010, 750/11 and 83 Ill. Adm. Code Part 725, the Commission must examine in detail and approve (based upon 911 system considerations and requirements) provision of competitive 911 services by Intrado to any specific Emergency Telephone Systems Board ("ETSB"). Id.; Staff Ex. 3.0 at 3-4. Any ruling that

presupposes that a certain 911 plan wherein Intrado offers service to an ETSB is consistent with the Commission's rules, and the public safety, should therefore be assiduously avoided.

Third, Staff believes the Commission will need to resolve certain issues relating to competitive 911 offerings outside of this proceeding. Whatever AT&T and Intrado agree to, or the Commission decides in this two-party arbitration, may be acceptable for purposes of forming this ICA; however, these may not be sufficient to satisfy 911 requirements and adequately ensure the public safety. Staff Ex. 3.0 at 6. Some of these issues affect not only AT&T and Intrado, but multiple carriers and ETSBs in the state. Id. A 911 docketed proceeding will permit all interested parties involved in any transition towards competitive 911 services and the introduction of Next Generation 911 (NG911)³ offerings to present their own positions. Id. at 7. Staff recommends the initiation of such a proceeding.

In keeping with these general decisional principles, Staff recommends that the Commission resolve arbitration issues 1, 4, 5, 7, 8, 9, 10, 11, 12, 14, 17, and 18 as follows:

II. Issues presented for arbitration

Issue 1 – Does Intrado have the right to Interconnection with AT&T under Section 251(c) of the Act for Intrado's provision of competitive 911/E911 services to PSAPs?

Staff position – Intrado has the right to interconnect under Section 251(c)(2) for this purpose

³ NG911 is an Internet protocol-based competitive 911 service provision pursuant to the ETSA and Code Part 725, which it appears to Staff that Intrado intends to provide in Illinois. Staff Ex. 3.0 at 7; see *also* Intrado Ex. 1 (Hicks) at 5-7.

This issue is obviously a threshold matter; in the event the Commission decides it in the negative, the remainder of the proceeding is effectively moot. Needless to say, Intrado takes the position that it is entitled to Section 251(c) interconnection for purposes of offering 911 and E911 service to ETSBs, Intrado Ex. 2 at 8-14, while AT&T asserts that Intrado is not so entitled. AT&T Ex. 1.0 at 13-25. The Staff has offered no testimony on this issue, primarily because it considers the matter to be a legal issue. In Staff's opinion, Intrado is entitled to Section 251(c) interconnection for the purpose of providing 911 and E911 service to ETSBs, but its entitlement to such interconnection is fully subject to the provisions of Section 251(c).

Section 251(c)(2) of the federal Act provides, in relevant part, that incumbent local exchange carriers such as AT&T have:

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

47 U.S.C. §251(c)(2)

Intrado contends that the services that it intends to provide are telephone exchange services. Intrado Ex. 2 at 9, 11. Intrado argues that Section 251(c)(2)

interconnection contemplates “one way” traffic of the sort that flows to Public Safety Answering Points (“PSAPs”).⁴ Id. at 11. Intrado states that, inasmuch as ILEC 911 service is treated as telephone exchange service, its 911 service should be as well. Id. at 11-12. Intrado further contends that its position is squarely consistent with Federal Communications Commission (“FCC”) findings. Id. at 12.

AT&T contends that Intrado is not entitled to Section 251(c) interconnection. AT&T Ex. 1.0 at 3-6; 13, *et seq.* It argues that Intrado, by its own admission, does not intend to offer exchange access service in Illinois such as would bring it within the ambit of Section 251(c)(2)(A). Id. at 14-17. AT&T further argues that denying Intrado Section 251(c)(2) interconnection will do the latter no harm, inasmuch as AT&T is prepared interconnect with Intrado pursuant to a non-Section 252(c) commercial agreement. Id. at 8; AT&T Ex. 2.0 at 11-13.

The Staff submits that the Commission has already addressed and disposed of this question. In its Arbitration Decision, In the Matter of the Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc., ICC Docket No 00-0769 (March 21, 2000) (Arbitration Decision”), the identical parties⁵ submitted substantially the same arbitration issue to the Commission for resolution. In resolving the issue, the Commission ruled that:

The testimony established that the services SCC intends to provide in Illinois include transportation of a 9-1-1 or emergency call. After an end-user has placed a 9-1-1 call, the call is routed from the caller's location to

⁴ PSAPs are facilities at which trained personnel answer 911 calls and dispatch appropriate first responders. PSAPs are operated by ETSBs.

⁵ AT&T then operated under the assumed business name “SBC Communications, Inc.”, while Intrado then operated under the assumed business name “SCC Communications”.

the local exchange point of presence ("POP") and then to the carrier's point of interconnection ("POI") with SCC, which is usually at the carrier's selective routing tandem. At that point, the voice call and the ANI is trunked to the appropriate PSAP. Data information about the caller is sent from the ALI node to the PSAP for processing. All carriers must connect with an ILEC to deliver emergency calls because the ILEC owns and controls the selective routing tandems. SCC connects to the ILEC at a switch or hub, which connects at the same place, and in the same manner, as any CLEC⁶ would connect.

While SCC does not intend to provide traditional dial-up telephone services in Illinois, that fact is not dispositive of the issue. [citation]. The language of TA 96 does not limit the definition of telephone exchange services in the manner in which Ameritech contends. Moreover, the FCC has held that, rather than being limited to traditional telephony, telephone exchange service includes non-traditional means of communication. [citation]. SCC provides a service that transports and enhances a 9-1-1 call. SCC, therefore, provides services that transmits between or among points specified by the user within the meaning of 47 U.S.C. § 153 (43). SCC also provides service within an exchange, or within a connected system of telephones exchanges, through a system of switches, transmission and equipment, by which, a subscriber can originate and terminate an emergency or 9-1-1 call. SCC therefore falls within the definition of telephone exchange service found in 47 U.S.C. § 153 (47). The Commission finds that SCC falls within the statutory purview of TA 96.

Arbitration Decision at 5-6 (citations omitted)

Neither AT&T nor Intrado has provided persuasive arguments to cause the Commission to depart from or alter its previous decision on this matter. Moreover, it appears to the Staff that Intrado proposes to provide essentially the same service here as it proposed to provide in March of 2000. Intrado Ex. 1 at 4-9. Accordingly, the Staff sees no reason for the Commission to depart from its prior decision, and recommends the adoption of Intrado's proposal.

⁶ An acronym for Competitive Local Exchange Carrier

Issue 4 - Should the ICA articulate that a PSAP's selection of its E911 provider is subject to being revoked, conditioned, or modified?

Staff position – Intrado's language should be adopted

Intrado argues that AT&T's proposal is improper, since carriers do not design networks subject to customer approvals. Intrado Ex. 2 at 17. Intrado states that carriers need only make certain that they have facilities in place to serve customers. Id. at 17-8.

AT&T characterizes its proposal differently, asserting that the real issue here is whether the ICA should recognize that the parties arrangements assume that they are each authorized to serve a certain PSAP, and where this is no longer the case 911 duties arising under the ICA no longer apply. AT&T Ex. 1.0 at 30-31.

Staff recommends that the Commission reject AT&T's proposed language. Staff Ex. 1.0 at 9. In its current form, this proposed additional language could be read by one or both parties to indicate that a PSAP or E911 customer served by E911 selective routers may unilaterally revoke, condition, or modify the terms of service provided by 911 system telecommunications providers. Id. Staff views this as incorrect and unsupportable. Id. Staff understands that any such changes involving 911 services are fully subject to examination, conditioning and approval by the Commission (pursuant to Commission Code Part 725), and can become effective only upon Commission approval. Id.

Issue 5 - For non-911 traffic, does Intrado need to establish trunks to each AT&T local tandem in a LATA where Intrado offers service?

Staff position – Neither position should be adopted in its entirety. The Commission should require direct trunking to each tandem within a LATA only when traffic volumes reach a level that justifies such a measure

Intrado contends that it is entitled to establish a single POI in each LATA. Intrado Ex. 1 at 10. It states that AT&T's proposal would undermine this right. Id.

AT&T contends that Intrado's right to establish a single POI in each LATA⁷ is not dispositive of this issue. AT&T Ex. 2.0 at 13, *et seq.* AT&T asserts that, if Intrado is not required to establish trunk groups to each tandem: (1) calls might be misrouted or blocked; and (2) tandem exhaust would be exacerbated. Id. at 16. AT&T further contends that, since Intrado would not be required to pay for transport between the POI and the AT&T tandem, it should have no objection. Id.

Staff notes that this is another issue that the Commission has previously addressed and decided. Staff Ex. 2.0 at 4. In its Arbitration Decision, MCI Metro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia Communications Inc.: Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 04-0469 (November 30, 2004) ("MCI Arbitration Decision"), the Commission determined that:

[This i]ssue ... deals with whether MCI is required to establish direct trunking to each SBC tandem in a LATA. SBC contends that MCI should be required to set up direct trunking to each SBC tandem, regardless of the traffic level. MCI asserts its rights to a single POI. Staff recommends that MCI establish direct trunking to a SBC tandem if busy hour traffic reaches the DS-1 level for three consecutive months. Staff's proposed threshold of traffic is the same as the one adopted by the Commission in the *Verizon Arbitration*. See 01-0007, Order at 6-8.

The Commission agrees with Staff that SBC's solution – simply requiring direct trunking, regardless of traffic levels – is no different from the one rejected by the Commission in the *Verizon Arbitration Decision*. MCI

⁷ AT&T appears not to dispute the premise that, insofar as Intrado is entitled to Section 251(c) interconnection, it is entitled to establish a single POI in each LATA.

appears to resist a specific obligation upon it, favoring an approach in which it collaborates with SBC on an ongoing basis to establish either direct office trunking or tandem trunking, where traffic patterns so warrant. In the Commission's view, however, MCI's approach would not provide a definite resolution of the issue. Staff's recommendation is appropriate, clearly defined, and does not impose an unreasonable burden on either party. Accordingly, it is adopted.

MCI Arbitration Decision at 91-92

As the Commission noted, the general principle that direct trunking should be required if busy hour traffic reaches the DS-1 level for three consecutive months is one of long standing, having been first adopted in 2000. *Id.* It is, furthermore "appropriate, clearly defined," and not burdensome. *Id.* The Staff notes that the requirement is intended to make certain that neither party bears an unreasonable burden. Staff Ex. 1.0 at 10. Neither party has articulated any basis for departure from this long standing practice. *Id.* The Staff, accordingly, recommends its adoption here.

Issue 7 - When Intrado is the designated 911/E911 service provider and AT&T's end office has end users served by more than one 911 selective router network:

- a) Is AT&T required to implement "line attribute routing" rather than using primary/secondary routing?
- b) If AT&T is not required to or is unable to implement "line attribute routing," is AT&T responsible for Intrado's expenses?
- c) If AT&T is technically incapable of implementing "line attribute routing," should all 911 calls from a split wire center be routed first to Intrado?

Staff position – AT&T's proposal should be adopted

This issue is perhaps the most vigorously contested one in the proceeding. It concerns a "split wire center" scenario, in which the boundaries of a wire center, or exchange, fall within the jurisdiction of more than one ETSB, and accordingly customers

in the wire center are served by more than one PSAP. Staff Ex. 2.0 at 5-6. Split wire centers are common, in light of the fact that the county and municipal boundaries upon which ETSB/PSAP service is based rarely correspond to telephone exchange boundaries. Id. at 6.

Currently, 911 calls originating from split wire centers are routed by a “primary-secondary” selective routing protocol. Staff Ex. 2.0 at 6-7. Primary-secondary routing involves routing calls initially to the selective router of the 911 service provider serving the ETSB/PSAP that covers the largest number of customers in the exchange, which becomes the primary router. Id. at 6. This primary router reroutes the calls to the other 911 service provider’s selective router as needed. Id. The existing selective routers are intended to access database records and route the 911 call to the appropriate PSAP. Id. at 6-7. Primary-secondary routing has been utilized for some time in Illinois and has in Staff’s opinion been proven reliable. Id. at 9.

Intrado has advanced a proposal which, it alleges, places it at parity with AT&T in split AT&T wire centers where it and AT&T serve PSAPs as 911 service providers. Intrado Ex. 1 at 12, *et seq.*; Intrado Ex. 2 at 18, *et seq.* Intrado argues that, to route calls to PSAPs that Intrado serves, AT&T should be required to establish dedicated, direct trunks from AT&T end offices to the appropriate Intrado selective router. Intrado Ex. 1 at 12. Intrado suggests that this can be accomplished by a method it refers to as “line attribute routing”, although it states that it is not urging the Commission to require AT&T to employ line attribute routing, but rather merely suggesting it as one possible way in which to route such traffic over dedicated direct trunks. Id. at 12, 16, 22.

Intrado claims entitlement to such relief based upon what is primarily a parity argument. *See, generally*, Intrado Ex. 2 at 19, *et seq.* It first contends that AT&T requires other LECs to establish dedicated direct trunks to its selective routers, and Intrado should, on the goose-and-gander theory, be permitted to do likewise. Intrado Ex. 1 at 13. Intrado further argues that, if primary-secondary routing is used where Intrado is the 911 service provider, but dedicated direct trunking is employed where AT&T serves that function, Intrado (and by extension customers placing 911 calls to Intrado-served PSAPs) is subjected to unlawful discrimination. Intrado Ex. 2 at 21.

Intrado further contends that Commission rules require dedicated direct trunking, Intrado Ex. 2 at 3-4⁸, and that primary-secondary routing builds unnecessary points of failure into the network. Intrado Ex. 1 at 17.

AT&T strenuously urges the Commission to reject this proposal. AT&T Ex. 2.0 at 22, *et seq.* AT&T first contends that “line attribute routing” is nothing more than a name that Intrado has applied to another concept called “class marking”. *Id.* at 23. AT&T next contends that line attribute routing / class marking has, to its knowledge, never been used in the United States to route 911 calls, and the National Emergency Number Association (“NENA”), a standard-setting body, does not recommend its use. *Id.* at 24; Tr. at 215. AT&T argues that the use of line attribute routing / class marking to route 911 calls would replace primary-secondary routing, a proven system, and might impair reliability. AT&T Ex. 2.0 at 26-7. AT&T further argues that implementing line attribute routing / class marking would impose substantial costs on AT&T. *Id.* at 29-31.

⁸ The pages of Mr. Hicks’ reply testimony are not numbered. Staff refers here to the third and fourth pages of text, excluding the cover sheet.

Staff urges the Commission to adopt AT&T's proposal and language, for any of three reasons.

First, Intrado's proposal has not been proven to be consistent with the public safety. As previously noted, there is no evidence that line attribute routing is currently, or ever has been, used for purposes of routing 911 calls anywhere in the U.S. It is apparently completely untested for this purpose, and Intrado appears to offer it up as one possible solution that might be implemented to further Intrado's business plan, rather than to insure the public safety in Illinois.

The Commission has not countenanced such positions in the past, and should not do so here. In its Order in Ramsey Emergency Services, Inc.: Application for a certificate of local authority to operate as a provider of telecommunications services in all areas in the State of Illinois, ICC Docket No. 04-0406 (November 17, 2005) ("RES Order"), the Commission denied a certificate of service authority to a carrier seeking to provide 911 service to ETSBs/PSAPs in the State of Illinois, based on findings that the carrier lacked the technical, financial and managerial resources and abilities to provide such services. RES Order at 18. In so finding, the Commission stated that:

The prospect of competitively offering E9-1-1 services is, from our perspective, a matter of far greater importance than the mere offering of local or interexchange retail service to customers. E9-1-1 service makes emergency, lifesaving protection available to every individual in even the most remote corners of the state. It further helps to safeguard residential and commercial property, protecting against the risk of loss of home or business. It is an indispensable lifeline for every individual present within Illinois.

...

The risks highlighted in this docket by Applicant's proposed services are enormous. The consequences if E9-1-1 service were unavailable for the briefest span of time to the smallest geographic area could be catastrophic.

RES Order at 13

As noted, Intrado's position appears to be based primarily on the notion that it should be on an entirely level playing field with AT&T, and that regulations require the dedicated direct trunking it wants. To obtain these results, Intrado is prepared to seek implementation of its untested and undoubtedly costly line attribute routing scheme as a substitute for the time-tested, reliable primary-secondary routing system currently in use. This runs precisely contrary to the Commission's policy, set forth with admirable clarity in its RES Order and affirmed on appeal, that the 911 system must, above all else, be as reliable as possible. While Intrado suggests that its proposal might add reliability to the 911 network, see Intrado Ex. 1 at 19-20, this view is shared by neither AT&T, NENA nor indeed any other entity engaged in the provision of 911 service. Accordingly, Intrado's line attribute routing proposal should be rejected out of hand for this reason alone, if for no other.

Second, Intrado's reading of Commission rules is overbroad because Rule 725.500 does not in fact require dedicated direct trunking. There are two reasons for this.

Section 725.500(c) provides, in relevant part, that: "Dedicated direct trunking shall be considered to be the standard method of providing incoming 9-1-1 circuits[,]" 83 Ill. Adm. Code 725.500(c), and this is the provision upon which Intrado relies. In doing so, however, Intrado ignores, as it must, Section 725.500(c)(2), which provides in relevant part that:

Alternative incoming 9-1-1 trunking methods may be utilized by the PSAP if technology and/or local telecommunications facilities can be designed and implemented. The quantity of trunks and related switching

components in the telephone network shall be engineered in accordance with good engineering practices and the applicable Commission Standards of Service specified for the interoffice and intertoll network to ensure completion of calls placed to 9-1-1 during the average busy hour of the average busy day.

83 Ill. Adm. Code 725.500(c)(2)

In other words, carriers and ETSBs/PSAPs may ignore the dedicated direct trunking standard provided that they can design trunking facilities that are properly engineered, reliable, and that the Commission approves. It is uncontroverted that primary-secondary routing is all of these things. Hence, it is a perfectly acceptable manner in which to route calls to Intrado-served PSAPs, and Rule 725.500(c) forms no basis for Intrado to demand dedicated direct trunking.

Further, any construction of Section 725.500 must take into consideration the undoubted fact that the rule in its current form dates from the Commission's First Notice Order⁹ in Illinois Commerce Commission on Its Own Motion: Revision of 83 Ill. Adm. Code 725, ICC Docket No. 93-0037; 1995 Ill. PUC Lexis 581 (September 13, 1995). This Order, to state the obvious, predates the adoption of the federal Telecommunications Act of 1996. Accordingly, the Commission could not and did not consider the possibility that there might at some point in the future be multiple carriers competing to provide 911 service to ETSBs/PSAPs, since competitive service of any sort was barely contemplated. The rules were promulgated on the assumption that the serving ILEC¹⁰ would provide 911 service to ETSBs/PSAPs. Under such circumstances, dedicated direct trunking from an ILEC selective router to a PSAP is a rational measure

⁹ The Rules were adopted in Notice of Adopted Rules, 20 Ill. Reg. 5335 (April 5, 1996).

¹⁰ A term used advisedly here, in light of the fact that, as a creation of the 1996 Act, it did not then exist.

calculated to promote the public safety. Where such a practice ceases to do so, the Staff urges the Commission to depart from it, and to construe its rule in proper historical context.

Third, it is clear that adoption of Intrado's proposal would: (a) have significant technical and cost implications; and (b) affect entities not a party to this proceeding. Staff Ex. 3.0 at 9-10. Thus, adoption of Intrado's proposal in this proceeding would be unwise and imprudent.

In summary, while Intrado's desire to obtain what it perceives as parity with AT&T is perhaps understandable, it cannot be a basis for compromising the public safety. Here, Intrado seeks implementation of an expensive, untried, and potentially unsafe method of call routing. It must be prepared to state a more compelling basis for doing so than its assertion of legal rights. As it has not done so, the Staff urges that its position be rejected. Staff Ex. 3.0 at 9.

Issue 8 - When AT&T is the designated 911/E911 service provider, is Intrado required to provide interconnection trunking to AT&T's selective router where Intrado provides telephone exchange service.

Staff position – Staff proposes alternative language

Intrado does not dispute that, when AT&T is the designated 911/E911 service provider, Intrado must deliver its end user's 911 calls over dedicated trunks to AT&T's selective router. Intrado Ex. 2 at 26. Intrado's proposal is to modify the language in the ICA to require Intrado to "deliver" 911 calls, rather than adopt AT&T's proposed language that requires Intrado to "provide interconnection trunking" to the AT&T

selective router.¹¹ Id. Intrado contends that its proposed language specifically allows Intrado to provide the necessary trunks itself or acquire them from a third-party, whereas AT&T's language may limit Intrado's ability to do so. Id. Intrado agrees that it finds the alternative language proposed by Staff regarding this issue to be satisfactory with one caveat. Intrado Ex. 2 at 8; Tr. at 104. Intrado seems to say that it will only agree to Staff's alternative language if reciprocal language is used in the ICA when Intrado is the selective router provider. Id. In other words, when Intrado is the designated 911/E911 service provider it expects AT&T to provide dedicated direct trunking to its selective router for delivery of AT&T's end user calls.

It is AT&T's position that Intrado's proposed language in the 911 Appendix § 4.2 could allow Intrado to use non-dedicated paths to send 911 calls to AT&T's selective router. AT&T Illinois Ex. 2.0 at 42. AT&T contends that Intrado must provide dedicated trunks to AT&T's selective router and not simply hand off 911 traffic to a third-party carrier. AT&T Illinois Ex. 2.1 at 2. It is unclear whether AT&T agrees with the alternative language proposed by Staff. It is also unclear how AT&T is interpreting Staff's alternative proposed language. AT&T states, "[t]he way that [AT&T reads] the language proposed by Ms. Schroll is that Intrado shall install dedicated direct trunking and not lease trunks or "arrange to deliver" 911 calls via a third party; further, it allows, as Ms. Schroll recognizes, Intrado to obtain its facilities from third parties." Id. It is unclear to Staff what AT&T means by this statement. AT&T seems to take the position that Intrado

¹¹ Staff has proposed alternative language for the parties to consider. Staff Ex. 3.0 at 1. It appears, (and if Staff is misinterpreting Intrado's interpretation Intrado should feel free to address its position in Reply Briefs) that Intrado is interpreting Staff's language to require Intrado to provide dedicated direct trunking to the AT&T selective router either through self-provisioned trunks or trunks which are acquired from a third-party.

must provide dedicated direct trunking and may not use a third-party to obtain the dedicated direct trunking. See *generally*, Tr. 217-219. Staff invites AT&T to further clarify its position on and interpretation of Staff's proposed alternative language in Reply Briefs.

Staff's position is that the Commission's 911 regulations, specifically, Section 725.500 (c), states that the standard for providing incoming 911 circuits is through "dedicated direct trunking." Staff Ex. 3.0 at 10, Tr. at 243. While, as noted above, this standard need not, by its terms, be observed in all cases, this is a case where observing it appears to the Staff to be efficient and proper. In lieu of Intrado's or AT&T's proposed language in the 911 Appendix § 4.2.1 of the ICA, Staff proposes the following alternative language:

CLEC shall provision through the use of dedicated direct trunking, the delivery of 911 traffic to each AT&T-STATE 911 Selective Router that serves the exchange areas in which CLEC is authorized to and will provide telephone exchange service.

Id. at 11.

Based on certain colloquies at the evidentiary hearing, see, e.g., Tr. at 104, it is unclear to Staff exactly what Intrado's or AT&T's interpretation of Staff's proposed alternative language is, and whether or to what extent either party concurs in the language, with or without certain caveats. Therefore, Staff clarifies that its proposed language will require Intrado to provide dedicated direct trunking to the AT&T selective router for the delivery of 911 traffic. However, Staff believes that its proposed alternative language also allows Intrado to either self-provision the dedicated direct trunks or acquire the dedicated direct trunks from a third-party. Staff believes this language will assure that 911 traffic is delivered on a dedicated network pursuant to Code Part 725

and allow Intrado the ability to acquire the necessary trunks from a third-party provider. Id. Staff recommends the Commission adopt Staff's proposed alternative language in the 911 Appendix § 4.2.1 of the ICA.

Issue 9(b) - For non-911 traffic, must Intrado establish a POI at an AT&T end office or tandem?

9(c) - Should Intrado's designated POI(s) be negotiated between the Parties?

Staff position – Intrado's language should be adopted

Intrado argues that, for non-911 traffic, it is entitled to designate any technically feasible point of interconnection ("POI") within AT&T's network. Intrado Ex. 1 at 27-28. Intrado states that this right is specifically afforded to it by statute and FCC rules. Id. at 28. Intrado argues that AT&T's proposal, which it states would require any POI to be at a mutually agreeable location, would undermine this right. Id.

AT&T argues that Intrado should be required to interconnect at an AT&T tandem switch or end office. AT&T Ex. 2.0 at 53. It argues that these are the "natural, sensible" places to interconnect, and where other CLECs interconnect. Id. It further argues that POI locations should be negotiated. Id. at 54.

In Staff's opinion, AT&T's position is insupportable as a matter of law. Section 251 (c)(2) and 47 C.F.R. §51.305(a)(2) authorizes a requesting carrier to designate a POI(s) at any technically feasible point within the ILEC's network. Staff Ex. 1.0 at 12. Indeed, the relevant FCC regulation provides that:

An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

(2) At any technically feasible point **within the incumbent LEC's network** including, at a minimum:

- (i) The line-side of a local switch;
- (ii) The trunk-side of a local switch;
- (iii) The trunk interconnection points for a tandem switch;
- (iv) Central office cross-connect points;
- (v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and
- (vi) The points of access to unbundled network elements as described in §51.319[.]

47 C.F.R. §51.305(a)(2)(emphasis added)

This specifically authorizes Intrado to establish a POI at any of several locations that are not a tandem or end office, and generally authorizes it to establish a POI anywhere it is technically feasible to do so.

Likewise, the Commission should reject AT&T's proposed negotiation language. Staff Ex. 1.0 at 13. AT&T's proposed language is inconsistent with interconnection pursuant to Section 251, which authorizes a requesting carrier to designate one or more POIs at technically feasible locations of its own choosing within the ILEC's network. *Id.* Generally speaking, there is no need for negotiation with or agreement by the ILEC concerning such chosen location(s). *Id.*

Staff therefore recommends that the Commission adopt Intrado's proposed language.

Issue 10(a) - When Intrado is the designated 911/E911 service provider, is AT&T required to establish a POI(s) on Intrado's network?

Staff position – The POI must be located on AT&T's network

Intrado contends that, when Intrado is the designated 911 service provider, AT&T should be required to designate and establish one or more POIs on the Intrado network. Intrado Ex. 1 at 28, *et seq.* Intrado argues that 911 calls have historically been handled differently from other traffic, and the handling of 911 traffic should generally be subject to different legal and regulatory requirements than non-911 traffic. *Id.* at 29. Intrado states that, where it is the 911 service provider, efficiency and reliability demand that the POI be established on the Intrado network. *Id.* at 29-30. Intrado argues that AT&T requires CLECs to establish POIs on the AT&T network, where AT&T is the 911 provider. *Id.* Intrado claims that, were it designated as 911 service provider and nonetheless required to establish a POI on AT&T's network, it will be subjected to disparate, discriminatory and unlawful treatment. *Id.* at 31-32. Intrado argues that the provisions of Section 251(c)(2)(B) and 47 C.F.R. §51.305(a)(2) that require any POI should be on the ILEC's network should be ignored in favor of Section 251(c)(2)(C), which requires that interconnection be equal in quality to subsidiaries, affiliates or other parties. *Id.* at 34.

AT&T argues that it is not required to establish a POI on Intrado's network as a matter of law. AT&T Ex. 2 at 44. AT&T states that, where Intrado is the designated 911 service provider, the POI should be at AT&T's selective router. *Id.* at 45. AT&T states that the only reason that Intrado seeks to require AT&T to designate a POI on Intrado's network is so that AT&T will bear the cost of carrying the traffic to the POI, rather than Intrado. *Id.* at 46. AT&T further argues that Intrado would require it to interconnect at

each Intrado selective router, thereby rendering the arrangement one-sided, in light of Intrado being obliged to establish only one POI. Id. at 48.

Staff recommends that AT&T's proposal be adopted, in part. First, Intrado's proposal is completely unlawful, and second, it is a fairly blatant attempt to shift costs.

In Staff's opinion, the issue here is, in practical terms, which party will pay for transporting traffic from AT&T's network to Intrado's network when and where Intrado is designated as the 911 provider. Staff Ex. 1.0 at 13. In this circumstance, if the POI is located within AT&T's network, Intrado will incur the costs to transport traffic from such POI to its own network. Id. If, however, the POI is located on Intrado's network, AT&T will incur the costs of transporting traffic from its own network to the POI(s) on Intrado's network. Id.

The problem with Intrado's position in this proceeding is that it is absolutely contrary to the existing law. Section 251(c)(2)(B) of the federal Act, and FCC Regulation 51.305(a)(2) clearly, explicitly and unquestionably require that, for purposes of the Section 251(c) interconnection Intrado seeks here, the POI must be located on the ILEC network. 47 U.S.C. §251(c)(2)(B); 47 C.F.R. §51.305(a)(2). Intrado acknowledges, as it must, this fact, but attempts to argue that this specific requirement should be ignored in Intrado's case, because it would, if not ignored, "obliterate" the general provision that entitles Intrado to interconnection equal in quality to that provided by AT&T to other carriers. Intrado Ex. 1 at 34.

The Staff will not, as the West Virginia Public Service Commission did, characterize this argument as "ludicrous on [its] face", and "unsupported by law or reason". Arbitration Award at 13, Intrado Communications, Inc. and Verizon West

Virginia Inc.: Petition for Arbitration filed pursuant to §252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5, W. Va. P.S.C. Case No. 08-0298-T-PC (Reopened); 2008 W. Va. PUC Lexis 3080 at 30-31 (November 14, 2008, Entered); *Arbitrator's decision upheld by* PSC, 2008 W. Va. PUC Lexis 3267 (December 16, 2008). However, Intrado's argument that Section 251(c)(2)(B) cannot be read to "obliterate" Section 251(c)(2)(C) is, to put it charitably, wishful thinking. Here, Intrado posits a conflict between a specific statutory provision: the POI must be on the ILEC network – and a general one: interconnection that is "equal in quality". However, it is well-settled at both the federal and state level that where specific and general terms of a statute conflict – as Intrado states unequivocally here that they do – the specific provision will prevail. McDonnell v. Cisneros, 84 F.3d 256, 261; 1996 U.S. App. Lexis 11662 at 16-7; 70 Fair Empl. Prac. Cas. (BNA) 1459; 68 Empl. Prac. Dec. (CCH) P44,065 (7th Cir. 1996); Winnebago County v. Davis, 156 Ill. App. 3d 535, 539; 509 N.E.2d 143, 146; 1987 Ill. App. Lexis 2595 at 10; 108 Ill. Dec. 717 (2nd Dist. 1987). Accordingly, Section 251(c)(2)(B), requiring the POI to be located on the ILEC network is the prevailing enactment. The POI must be located on AT&T's network.

This is not to suggest, however, that AT&T can dictate where on its network any POI can be located. For the reasons stated in the Staff's discussion of Issue 9 above, it cannot. Staff recommends that the Commission direct the parties to insert language consistent with and fully reflecting the principle that Intrado may designate one or more POIs at any technically feasible location within AT&T's network. Staff Ex. 1.0 at 14. This principle is well established, and it is clearly set forth in both the 1996

Telecommunications Act, and applicable rules and regulations promulgated pursuant to that Act. Id.

Issue 11 - When a fiber meet point is used:

(a) For 911 traffic, should the fiber meet point be at AT&T's selective router location or at some point between the parties' networks?

(b) For non-911 traffic, should the fiber meet point be at AT&T's end office or tandem location or at some point between the parties' networks?

(c) For non-911 traffic, should each party; 1) provide 50% of the facilities to reach the meet point; 2) be solely responsible on its side of the fiber meet; 3) be prohibited from charging the other party for the facilities?

Staff position – Intrado's language should be adopted for Issues 11(a) and 11(b), and additional clarifying language included for Issue 11(c)

Intrado argues that, where the parties agree to interconnect using a mid-span fiber meet point, they would negotiate a point at which each party's financial and physical responsibility for traffic begins and ends. Intrado Ex. 1 at 39. Therefore, each party should pay its portion of the costs to reach the meet point, even if the ILEC is required to build new facilities to reach that point. Id. at 39-40.

AT&T contends, as it has throughout, that the POI in this instance should be at the AT&T selective router. AT&T Ex. 2.0 at 50. AT&T believes that Intrado should bear the cost of all facilities up to that point. Id. at 50-1.

Concerning Issue 11(a), Staff notes that the language proposed by each party contains the proviso that any fiber meet point(s) will occur at mutually agreeable and technically feasible point(s). Staff Ex. 1.0 at 14-5. Intrado proposes that any agreed-to fiber meet point be on AT&T's network, while AT&T seeks to restrict the potential meet point locations to its selective router locations. Id. at 15.

In the Staff's view, AT&T's proposal is overly restrictive and inconsistent with Section 251 rules and regulations. Staff Ex. 1.0 at 15. Staff recommends that the Commission reject AT&T's proposal, and accept Intrado's proposed language. Id. However, the Staff cautions Intrado to be fully mindful of the fact that any such meet points ultimately employed must yield network configurations and 911 call paths which are fully consistent with all applicable requirements of Code Part 725. Id.

Regarding Issue 11(b), the Staff recommends that the Commission require adoption of Intrado's proposed language. Staff Ex. 1.0 at 15; see *a/so* First Report and Order, ¶553, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, FCC No. 96-325, CC Docket No. 96-98; CC Docket No. 95-185, 11 FCC Rcd 15499; 1996 FCC Lexis 4312; 4 Comm. Reg. (P & F) 1 (August 8, 1996) (hereafter "Local Competition Order"). The FCC has found that meet point interconnection arrangements are technically feasible under Section 251 (c) interconnection. Id. It has further found that while, for Section 251 interconnection purposes, the POI remains on the ILEC's network, meet point interconnection may require the ILEC to build out (and pay for) facilities on a "limited" basis from the POI to the physical meet point. Id. at 15-6. In Illinois, it is within this Commission's purview to determine an appropriate maximum distance an ILEC may be required to deploy (and pay the costs of) its own facilities from the POI to the meet point. Id. Thus, depending upon individual circumstances, a given meet point may indeed be considered to lie "between" the networks of the ILEC and the requesting carrier. Id.

In light of the fact that Intrado's proposed language specifies that any meet point

arranged “between the Parties’ networks” must be mutually agreed upon, Staff can identify no reason for the Commission to reject Intrado’s proposed language. Staff Ex. 1.0 at 16. However, Intrado (and AT&T, which by this language must agree to any such meet point arrangement) again must be mindful of the fact that such meet point(s) employed ultimately must yield network configurations and 911 call paths which are fully consistent with all applicable requirements of Commission Code Part 725. Id.

With respect to Issue 11(c), Staff urges the Commission to reject Intrado’s language for several reasons. First, the language providing that the two parties will “jointly provision” the meet point interconnection facilities is unnecessarily vague. Staff Ex. 1.0 at 17. This provision, in Staff’s view, could be construed to mean many things other than appropriate meet-point interconnection as required under Section 251(c) interconnection rules and regulations. Section 251 (c) meet point interconnection requires that each party provision and pay for its own facilities up to the meet point. Id. In Staff’s opinion, Intrado’s proposed language could, at minimum, cause disagreement and controversy between the parties. Id.

Second, the proposal that each party provide “fifty percent (50%) of the facilities to the Fiber Meet Point” is imprecise, arbitrary and inconsistent with Section 251 meet point interconnection requirements. Staff Ex. 1.0 at 17. The metric to be used in conjunction with this allocator (e.g., length, cost, traffic carried) is unclear and these metrics could – and likely most often would - differ. Id. More significantly, a 50% allocation of responsibility (however measured and applied) would be inconsistent with Section 251 meet-point interconnection requirements, which specify that each party will provide (and incur the costs associated with) facilities to reach the physical meet-point.

Id. at 17-18. It would be simple happenstance if any given meet point arrangement resulted in the two parties providing 50% (regardless of metric utilized and however measured) of the combined total of the facilities at issue. Id. Other than such a case of sheer happenstance, Intrado's proposal would yield results inconsistent with Section 251 interconnection requirements. Id.

Finally, Staff is of the opinion that Intrado's proposed language that "each Party will be financially responsible for the facilities on its side of the Fiber Meet Point and will not bill the other Party for any portion of those facilities" would, at minimum, require modification to be acceptable. Staff Ex. 1.0 at 18. This proposed language is consistent with Section 251 meet point interconnection requirements only when viewed strictly from the standpoint of facilities costs. (Each party is wholly responsible for facilities on its side of the meet point). Id. However, the stricture against billing "the other party for any portion of those facilities" might be construed to prevent any billing for the use of these facilities. Id. Such an interpretation could be improper. Id.

AT&T appears to be concerned that Intrado would attempt to apply such an interpretation. Staff Ex. 1.0 at 18. Where the designated POI is located somewhere other than the physical meet point (always or often the case in Section 251 meet point arrangements), it could be appropriate for one party to bill the other for the use of its facilities when traffic is exchanged. Id. at 18-9. Thus, in Staff's opinion, additional language would be required to clarify that such appropriate billing for use of meet point facilities (to exchange traffic) is not prevented or impeded.

Issue 12 – If PSAPs request PSAP-to-PSAP transfer capability should the parties negotiate a separate agreement for such an arrangement that includes the PSAPs?

Staff position – Requests for such interconnectivity should be negotiated and incorporated into the parties' ICA

In order for 911 calls to be transferred between PSAPs, inter-selective router trunking, i.e., trunking between selective routers, must be deployed. Intrado believes that inter-selective router trunking is important in order for PSAPs to communicate with each other seamlessly and receive Automatic Number Identification ("ANI") and Automatic Location Identification ("ALI") information. Intrado Ex. 2.0 at 39. Intrado contends it is also important in order for misdirected calls to be transferred to the proper PSAP. Id. Intrado notes that, without inter-selective router transfer capability, PSAPs would have to transfer a misdirected call over the Public Switched Telephone Network ("PSTN") and a caller's ANI and ALI would be lost. Id. at 40. If inter-selective router transfer capability is established, call transfers between PSAPs are able to occur without losing the ANI and ALI associated with the call. Id.

It is Intrado's position that it is not necessary to obtain "formal written PSAP approval" before deployment of inter-selective router trunks and, therefore, a requirement for a separate agreement should not be included in the ICA. Id. Intrado agrees that AT&T and Intrado would only discuss transfer capability when a PSAP requests it. Intrado Ex. 2 at 11; Tr. at 73. Intrado believes its proposed language in Appendix 911 § 1.4 would allow PSAPs to discuss and establish operational procedures once a PSAP requests transfer capability and these discussions are sufficient, without a formal agreement, to implement transfer capability. Tr. at 73. Lastly, it is Intrado's

position that costs of establishing inter-selective router trunks can be recovered from the PSAP customer. Intrado Ex. 2 at 11.

It is AT&T's position that Intrado's language in Appendix 911 § 1.4 would require AT&T to implement PSAP to PSAP transfer capability when an Intrado PSAP customer requests it regardless of whether AT&T's PSAP customer wants to establish transfer capability. AT&T Ex. 2.0 at 54. Further, AT&T states that Intrado wants AT&T to do this without a written agreement or guarantee of cost recovery for AT&T. Id. It is AT&T's position that transfer capability terms should be handled outside of a Section 251 agreement because it involves a service requested by an outside third-party who is not a party to the ICA. Id. at 55. Further, AT&T argues that under Intrado's proposal AT&T would be required to implement transfer capability, but it would not have a signed agreement to receive cost recovery from Intrado or the requesting PSAP. Id. at 57.

AT&T points out that transfer capability comes from a specific request made by individual ETSBs/PSAPs, none of which are parties to the ICA, and that the ICA should only involve trunking and facility arrangements between AT&T and Intrado. Id. at 58.

AT&T rejects Staff's proposal to allow the specific terms and conditions of a special agreement for transfer capability to be included as an amendment to the ICA. AT&T Ex. 2.1 at 6. AT&T argues that the ICA should only involve matters covered by Section 251(b) and 9c), and transfer capability is not such a matter. Id. In addition, AT&T foresees that Staff's proposal would lead to a large number of amendments to the ICA. Id.

Lastly, AT&T states that its preference would be for this issue to be left out of the ICA completely, however in the alternative, it proposes the language it provided in Appendix 911 § 1.4. AT&T Ex. 2.0 at 58.

Staff first notes that it has yet to be determined whether PSAP to PSAP interconnectivity is a proper issue under a Section 251/252 ICA. Given that, Staff understands the importance of transfer capability between PSAPs and the importance of keeping the ANI/ALI information with a call. Based on this consideration, it is Staff's position that it is reasonable for the ICA to allow for transfer capability. Staff Ex. 3.0 at 11. Staff recognizes AT&T's concern that, without AT&T's additional proposed language, Intrado may seek to implement inter-selective router trunking for its PSAP customer regardless of whether AT&T's PSAP customer wants it. Id. Staff also recognizes AT&T's concern that without a written agreement AT&T has no guarantee of compensation from PSAPs for deploying inter-selective router trunking. Id. Staff believes AT&T's concerns are reasonable.

Nonetheless, Staff notes that in Illinois, 911 programs are not mandated by the State; rather they are managed by individual local authorities and, therefore, it is unreasonable to mandate interoperability between telecommunication carriers' selective routers. Id. at 12. Local governments receive a surcharge which is approved by local voters to run their programs and use this surcharge based on their needs. Id. at 13. Today, interconnectivity is not a requirement of ILEC selective routers. Id. Staff believes the only way for Illinois to obtain true interoperability is for a statewide funding mechanism to be implemented. Id.

Staff believes addressing transfer capabilities goes beyond the standard issues covered in a Section 251 ICA. Id. Details of an agreement between ETSBs/PSAPs to establish transfer capabilities will be unknown until an ETSB/PSAP actually requests the service and, therefore, there is no way to include details of a future unknown arrangement in an ICA. Staff suggests, in light of AT&T's concerns, and other considerations Staff has noted, when a request is made by ETSBs/PSAPs, the terms and conditions of the arrangement for interconnectivity be incorporated as an amendment to the ICA.

Issue 14 – Should AT&T be required to provide Intrado with an initial trunk forecast?

Staff position – The agreement in reached in the course of the parties' Ohio arbitration proceeding appears satisfactory

Intrado states that forecasts are necessary to make certain that the parties' networks are engineered to support the amount of traffic likely to pass over them. Intrado Ex. 1 at 42-3. Intrado seeks to make existing forecast provisions reciprocal, so that both parties are required to provide forecasts. Id. at 43. Intrado states that its proposal would only require AT&T to provide a forecast that the latter routinely creates. Id.

AT&T states that, provided it can provide the forecast it routinely creates, Intrado's proposal is acceptable. AT&T Ex. 2.0 at 61.

Staff concurs in this apparent resolution. Staff Ex. 2.0 at 11.

Issue 17 – Should the ICA requirement of 30-day notice apply to a party’s “request” or its “intent” to change the parties’ physical architecture plan?

Staff position – The dispute regarding this issue appears to be non-substantive and semantic

Intrado argues that the use of the word “intent” implies a unilateral right to alter physical architecture arrangements established by the ICA. Intrado Ex. 1 at 46. Intrado’s position is that a party may only “request” such a change. Id.

AT&T states that, in light of the fact that a change in network architecture affects non-party carriers, notice should be given prior to any changes being made, so that parties affected by the change may review the matter. AT&T Ex. 2.0 at 65. AT&T also notes that changes in the architecture of the 911 network must be approved by the Commission. Id. at 65-6.

In Staff’s view, this appears to be a disagreement regarding semantics rather than substance. Staff Ex. 2.0 at 12. Both parties appear to agree that it is critical that neither party be able to modify the network architecture in place for transmitting 911 calls without input from the other party. Id. Accordingly, either party’s language is acceptable.

Issue 18 - Should the ICA provide that the parties will document and sign an interconnection plan prior to its implementation?

Staff position – AT&T’s language should be adopted

Intrado argues that, once an ICA is concluded between the parties, no further notice or action, other than routine discussion between operational personnel, is required to implement it. Intrado Ex. 1 at 45. While Intrado agrees that a plan of this nature might be beneficial, it need not be reduced to a formal signed agreement. Id.

AT&T argues that an interconnection plan is necessary in practical terms. AT&T Ex. 2.0 at 64. Specifically, AT&T contends that it adds certainty, efficiency, and reduces the likelihood of the Commission having to revisit the matter to resolve disputes. Id.

Staff concurs in AT&T's position that the ICA should provide that the parties will document and sign an interconnection plan prior to its implementation. Staff Ex. 2.0 at 11. While the ICA covers the basics of interconnection between the carriers, it is not possible for the specifics of the interconnection to be contained in the document. Id. AT&T has a proven system in place that assures that the interconnection is handled in such a manner as to avoid misrouted traffic. Id.

III. Generic Proceeding

As the Staff has noted throughout, this proceeding raises issues that implicate the rights and interests of numerous entities which are not, nor can be, parties to this proceeding. This proceeding raises the question of competitive provision of 911 service itself, along with how competitive 911 providers will interconnect with the network; how call routing will be accomplished, and how transfer capability will be implemented, among others. These matters are vital to the health, safety and welfare of Illinois citizens, and are in the Staff's opinion best addressed in a generic proceeding rather than a two party arbitration.

The Staff therefore requests that the Commission direct it to prepare a Staff report and draft Initiating order opening such a proceeding.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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